In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 361

E. G. ROBINSON, JR., tr as PALMETTO BROADCASTING COMPANY (WDKD), PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

This case raises no question warranting review by this Court. The Federal Communications Commission denied petitioner's application for renewal of a radio station license on the grounds (1) that the licensee made deliberate misrepresentations to the Commission concerning his knowledge of the station's programs and (2) that the station had devoted a substantial amount of time to material which was patently

offensive by any standard. The Commission further held that it considered each of these grounds an independent reason for disqualification[1] and that, therefore, petitioner's misrepresentations, standing alone, required a denial of the renewal application.[2] The court below was at pains to point out (Pet. App. 4A-5A) that it was sustaining the denial of petitioner's license renewal solely because of petitioner's misrepresentations to the Commission, and that it was "intimat[ing] no views on whether the Commission could have denied the applications if Robinson had been truthful."

Thus, the only question properly presented here is whether the Federal Communications Commission may

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[1] See J. App. 293, 301, 313-314.

[2] It is clear that the Commission's finding that the licensee was guilty of misrepresentations is supported by substantial evidence. Contrary to petitioner's contention (Pet. 11-15), Robinson's letter of June 10, 1960 (Pet. App. 2A) in response to the Commission's inquiry denied knowledge not only of certain specific statements of the disc jockey, Charlie Walker, which had been sent to Robinson by his counsel, but also of the general content of the Walker broadcasts. The letter itself is not limited to the particular quotations supplied by his counsel, and Robinson testified at the subsequent hearing (J. App. 313-314) that the letter from his counsel was the first time that the "sort of thing" contained in that letter had been brought to his attention. Furthermore, Robinson continued to maintain during the hearing that, except for some punning epithets for the names of towns, he had known of nothing coarse, vulgar or suggestive in the Walker broadcasts (J. App. 335) and that he had never received oral or written complaints about the Charlie Walker program (J. App. 345-348, 394-396, 397-398). The examiner, the Commission, and the court below all agreed that there was convincing evidence to the contrary.

deny renewal of a license for a radio broadcast station where the licensee purposely misrepresents to the Commission his knowledge of the nature of the station's broadcasts. The court's disposition of this issue was in full accord with the settled rule that deliberately false statements warrant denial of a license renewal. *Federal Communications Commission* v. *WOKO, Inc.*, 329 U.S. 223; *Federal Communications Commission* v. *Broadcasting Service Organization, Inc.*, 337 U.S. 901, reversing *per curiam* 171 F. 2d 1007 (C.A.D.C., 1949); *Immaculate Conception Church of Los Angeles* v. *Federal Communications Commission*, 320 F. 2d 795 (C.A.D.C., 1963), certiorari denied, 375 U.S. 904.

In challenging the Commission's authority to deny renewal because of the licensee's past programs, petitioner would have this Court decide a question which was not necessary to the decision below and which the court of appeals' majority specifically declined to reach. The constitutional ruling sought would merely be advisory. Since the ground of the decision below rests on familiar principles and is clearly correct, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

HENRY GELLER,
General Counsel,
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SEPTEMBER 1964

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